

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:06 CR 165-18**

UNITED STATES OF AMERICA,

Vs.

JOSHUA LEE RUSSELL,

Defendant.

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ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned based upon a motion filed by the defendant entitled, "Motion for Bond Reconsideration". In the motion, the defendant has alleged that he has now successfully completed the Jail Based Inpatient Treatment Program and that based upon this change of circumstances, the defendant should be released on terms and conditions of pretrial release and from the evidence offered by the Government and the evidence offered by the defendant and the records in this cause, the court makes the following findings:

Findings. The court has reviewed the order of detention entered in this matter on August 25, 2006 and has considered all of the evidence introduced both by the Government and the defendant. In regard to having reconsidered the issue the court readdresses the factors as set forth under 18 U.S.C. § 3142(g) which are the factors to be considered in regard to determining whether or not the defendant should be released on terms and conditions of pretrial release:

(g)(1): The nature and circumstances of the offense charged involve a narcotic drug.

(g)(2): The weight of the evidence against the person appears to be significant. The defendant has now entered a guilty plea in regard to the charge in which he is alleged to have entered into a conspiracy to possess with intent to distribute a quantity of methamphetamine. .

(g)(3): The history and characteristics of the person

(A) Family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court appearances indicate that the defendant has family ties, employment, financial resources, and a long length of residence in the community and has community ties. He also has financial resources and family ties. Another examination of the defendant's criminal record shows that the defendant has an almost extensive criminal record. The court incorporates, by reference, the criminal record of the defendant as set forth in the order of August 25, 2006. The court notes that many of the convictions of the defendant occurred while he was on probation for previous charges.

(B) At the time of the current offense or arrest, the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of sentence. The defendant was serving a term of supervised probation for driving while license revoked and failure to give information or aid to a person injured during the period of time alleged in the bill of indictment.

(g)(4): The nature and seriousness of the danger to any person or the community that would be posed by the person's release indicate that there is a danger that would be posed by the release of the defendant to any other person or the community.

The undersigned has considered the evidence presented by the defendant and particularly the defendant's mother. However, the history of the defendant is that he has resided with his mother and father but when the defendant decides that he is going to use controlled substances he simply leaves the home of his mother and father to use those substances. The defendant has completed the Jail Based Inpatient Treatment Program to his benefit and credit. The recommendation of the United States Probation Office is that, despite his completion of the program, that the defendant remain in custody pending the disposition

of his case. The United States Probation Office cites the following risk factors: lengthy criminal record, substance abuse history and prior felony conviction. These factors indicate to the undersigned that the release of the defendant would pose a danger to the safety of any other person or the community. The release of a defendant on terms and conditions of pretrial release is similar in many circumstances to that of being on state probation. The defendant, in this case, has been on probation repeatedly and during those periods of probation has repeatedly committed crimes during periods of time when he was either on supervised probation or unsupervised probation.

After reconsidering all of the factors and the evidence presented by the defendant, the court finds that there is an indication that the release of the defendant would create a danger to any other person or the community in that the defendant would commit other crimes relating to the use or distribution of controlled substances while on terms and conditions of pretrial release. As a result of the foregoing, the undersigned has determined to enter an order denying the motion for reconsideration filed herein by the defendant.

ORDER

WHEREFORE, the motion filed by the defendant entitled, "Motion for Bond Reconsideration" is hereby **DENIED** and the defendant is hereby detained pending further orders of the court.

Signed: November 1, 2006

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

